(1) 89-1292

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

KARL ROBERT BYERS, JR.
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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55 (4)

Questions Presented for Review

1. Whether the District Court conducted an adequate inquiry of the defendant pursuant to Federal Rules of Criminal Procedure, Rule 11, and property advised him at the hearing conducted on February 3, 1984 concerning his guilty pleas to the counts of his indictment.

2. Whether the District Court adequately complied with Rule 32 of the Federal Rules of Criminal Procedure at the defendant's sentencing hearing which was conducted on April 17, 1984.

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Procedure

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RESPONDENT

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PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit affirming the judgment of the district court.

Opinion Below

The Opinion of the United States Court of Appeals for the Fourth Circuit has not been prepared for publication and will not be reported. A copy of the opinion is attached as Appendix "A" to this petition.

The opinion of the United States District Court for the District of South Carolina, Charleston Division, was rendered from the bench and is not reported.

Jurisdiction

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on December 14, 1989. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

Statutory and Constitutional Provisions

A. The appropriate provisions of Federal Rules of Criminal Procedure, Rule 11, are attached as Appendix "B."

B. The appropriate provisions of Federal Rules of Criminal Procedure, Rule 32, are attached as Appendix "C."

C. The Fifth Amendment of the United States Constitution provides in part that:

No person ... shall ... be deprived of life, liberty, or property without due process of law....

STATEMENT OF THE CASE

Defendant Karl Robert Byers, Jr. was arrested and charged in a nine count indictment. Trial of the Defendant was conducted before the Honorable Falcon B. Hawkins, United States District Court Judge for the District of South Carolina, Charleston Division, and on April 17, 1984, having entered a guilty plea to all counts, Defendant Byers was sentenced under Count Nine (which charged that he engaged in a Continuing Criminal Enterprise) to imprisonment for term of twenty-five years, without parole, a fine of $100,000.00 and forfeitures.

At the hearing conducted on February 3, 1984 pursuant to Rule 11 of the Federal Rules of Criminal Procedure, before accepting the defendant's offered guilty plea, the Court was obliged to "inform

the defendant of, and determine that the defendant understands, the following:"

a."the nature of the charge to which the plea is offered" - This was "accomplished" by the following series of questions and answers: [addressing the defendant, the Court asked]

Q. Do you think that you understand everything that's occurring here today?

A. Yes, sir.

THE COURT: Mr. Garland, Mr. Howe [the defendant's attorneys], do y'all think that he understands everything that's happenning here today? Mr. Howe?

Mr. HOWE: Yes, Your Honor.

THE COURT: Mr. Garland?

MR. GARLAND: Yes, Your Honor.

THE COURT: And Mr. Littlejohn, or

Daniel, whomever, is going to speak for the government.

MR. LITTLEJOHN: Your Honor, we have no reason to believe that he does not know what he's doing here today.

THE COURT: Let the record show that I find the defendant competent to enter this plea.

b. "the maximum possible penalty provided by law, including the effect of any special parole term . . ." Being sentenced under Count Nine, this was accomplished by the following series of questions and answers:

Q. And that as to count nine, that is, the continuing criminal enterprise count, that this Court could sentnece you to a maximum sentence of a fine of one hundred

thousand dollars and/or life imprisonment or both. Do you understand that?

A. I understand that.

MR. LITTLEJOHN: Your Honor, excuse me. For the record, should we indicate that that sentence on count nine carries a minimum mandatory of ten with no parole?

THE COURT: Well, they didn't list it on here, but I will advise him of that.

MR. LITTLEJOHN: All right, sir.

BY THE COURT:

Q. Mr. Byers, do you further understand that the minimum sentence I could give you as to count nine, that is, the continuing criminal enterprise, would be a sentence of ten years?

A. Yes, I do.

Q. All right. Now, as to a special parole term that might be added to those counts which I've already read to you, that a special parole term can be added and that the minimum length of that special parole term must be imposed and, in addition, that the special parole term is entirely different from and in addition to any ordinary parole you might get from some Bureau of Prisons, and that if you violate that special parole term that you could be returned to prison for the remainder of your sentence and the full length of the special parole term?

A. I understand that.

Further, Rule 11 (f) provides that "the court should not enter a judgment upon such plea without making such inquiry as

shall satisfy it that there is a factual basis for the plea." After permitting the government "to summarize," the court asked the defendant "is it substantially correct?" The defendant's reply was: "It's close, your Honor."

Finally, Rule 32 (a)(1)(A) provides that:

> ... Before imposing sentence, the court shall also - (A) determine that the defendant and his counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

The only references to the presentence report came at the sentencing hearing where the Court, addressing the

defendant, said:

> ...I will enter a judgment of guilty and sentence you on the basis of your guilty plea and after I have already read the pre-sentence report. In other words, you would be sentenced based on this pre-sentence report and your guilty plea. Do you understand that?

And the Court further said: "So I weigh all those things, and I give a lot of consideration to what you furnished me with last night, just like I give a lot of consideration to what the government has furnished me with and with the pre-sentence report."

Nothing further was said. The court asked not one question. The court had no

reason to believe that the defendant had read the pre-sentence report. The Court did not inquire of the defendant if he had, indeed, had the opportunity to read and discuss the presentence investigation report.

The defendant appealed to the United States Court of Appeals for the Fourth Circuit; oral argument was held on October 4, 1989 and the Fourth Circuit rendered its Per Curiam opinion affirming the judgment of the United States District Court for the District of South Carolina, at Charleston, on December 14, 1989.

Reason for Allowance of the Writ

The errors of the court of appeals are so fundamental that its judgment should

be vacated without additional briefs or arguments.

The Federal Rules of Criminal Procedure were established for the very important purpose of providing reasonable safeguards and protections for an individual who is charged with a criminal act.

The court of appeals rendered its decision not only in conflict with decisions in other courts of appeal on the same matter but its own, in conflict with the Federal Rules of Criminal Procedure and did, in fact, depart from the accepted and usual course of judicial proceedings in denying basic protections to your petitioner as to call for an exercise of this Honorable Court's power of supervision. Further, the question of application of the Rules of procedure

should be settled by this Honorable Court as a guideline for all future trials insofar as the application of these Rules is concerned.

I.

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT HAS IMPROPERLY DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW AND CRIMINAL PROCEDURE WHICH SHOULD BE SETTLED BY THIS COURT CONCERNING WHAT MAY BE CONSIDERED COMPLIANCE BY A DISTRICT COURT WITH THE REQUIREMENTS OF RULE 11 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

Rule 11 requires the court, before accepting a plea of guilty, to take certain steps to inform the defendant personally of (not his counsel) and to determine that the defendant personally (not his counsel) understands the nature of the charges. Simply asking the

defendant if he "understand[s] everything that's occurring here today" is not sufficient. The court couldn't possibly determine anything of substance from that simple inquiry. And an inquiry of counsel is not an inquiry of the defendant.

In order for a guilty plea to be deemed voluntary, "the district court must comply strictly with Rule 11." U.S. v. Adams, 5th Cir., 1978, 566, F.2d 962. The court went on to say:

> In 1966 the rule was amended to forbid the court to accept the plea "without first addressing the defendant and determining that the plea is made voluntarily with understanding of the nature of the charge and the voluntariness of the pleas." ...the Supreme Court held in

McCarthy that there must be strict compliance with the rule.

On December 1, 1975, Fed.R.Crim. P. 11 was tightened by amendments providing that trial judges accepting guilty pleas "must address the defendant personally in open court," inform him of certain constitutional rights, certain consequences of his plea, and the nature of the of the charges to which he is pleading. The trial judge must also determine that the defendant understands what he is told ... "compliance with Rule 11 must be literal." [citation omitted] And in McCarthy, the Supreme Court notes that "any noncompliance with Rule 11 is reversible error."

In 1979, the Fifth Circuit in United

States v. Dayton (604 F.2d 931) published GUILTY PLEAS AND RULE 11: A LITTLE HISTORY in order to consolidate the requirements for its several panels and set forth a list of standards. At p. 934:

> That receiving such pleas is a process beset with pitfalls is also common knowledge, however. Of these, the two most dangeroushave long been recognized: coerced pleas and ignorant ones. ... at the minimum a decent system of justice will concern itself that the admission is voluntary and the defendant knows what it is he is admitting....

The Dayton court refers to:

> absence of coercion, understanding of the accusation, and knowledge of direct consequences of

the plea as "core considerations, requirements that manifestly must lie at the heart of any respectable system for settling (as opposed to trying) criminal charges."

The petition addresses not only the McCarthy court's requirement of strict compliance but also the Dayton court's "core concerns."

In addition, to personally informing the Defendant, the trial Court must "determine that the defendant understands the nature of the charge." (U.S. v. Adams supra) The Court continues:

> To inform a defendant of the nature of the charge must mean more to (sic) having the indictment read to the defendant. Reading the indictment informs the defendant of the

technical charge. But the trial court should proceed " on the assumption that the defendant is ignorant of the nature of the charges." United States vs. Coronado, 5 Cir 1977, 554 F.2d 166, 172. In most cases only the most sophisticated defendant would be informed of the nature of the charge by a reading of the indictment without more.

* * *

... But "no matter how simple the charges, a district court should make the minor investment of time and effort necessary to set forth their meaning and demonstrate on the record that the defendant understands."

* * *

... Asking Adams whether he intended to distribute the cocaine was

insufficient to determine whether he understood the charge.... This question is of little help in explaining to a defendant the nature of the charge to which he is pleading or in determining that he understands the charge....

* * *

In adhering to the rule's mandate that it address the defendant personally, the court should engage in extensive an interchange as necessary to assure itself and any subsequent reader of the transcript that the defendant does indeed fully understand the charges. With respect to some points the court may choose to have the defendant recount his or her understanding of the charges in narrative form and in his or her own language.

* * *

Moreover, a determination that the defendant has gone over the indictment with his attorney is not the determination that Rule 11 requires.

* * *

... the trial judge must carefully and personally explore the defendant's understanding of each of its items. ...

Dayton tells us, at pp 936-938, n. 11:

"It is ... not too much to require that, before sentencing defendants to years of imprisonment, district judges take the few minutes necessary to inform them of their rights and to determine whether they understand

the action they are taking." [citing McCarthy, supra, at 471]

... (T)he judge must inform him of these and ... an entire failure by the judge to do so will ordinarily require reversal. The rule plainly says he "must" do this ... and if the task it sets be slightly onerous, it is not difficult. ... For simple chares, ... a reading of the indictment, followed by an opportunity given the defendant to ask questions about it, will usually suffice. Charges of a more complex nature,incorporating esoteric terms or concepts unfamiliar to the lay mind, may require more explication. In the case of charges of extreme complexity, an explanation of the elements of the offenses like that

given the jury in its instructions may be required .... If the court wishes to rely on the defendant's sophistication, however - as in the case, say, of a member of the bar - it would be advisable to get it on the record by questioning him.

U.S. v. Coronado, states:" Moreover, a determination that the defendant has gone over the indictment with his attorney is not the determination that Rule 11 requires."

(T)he trial judge must carefully and personally explore the defendant's understanding of each of its items." Adams supra, at 969 (Gee, C.J. specially concurring)

Was this Court relying "on the

defendant's sophistication?"

Your petitioner deems this requirement to be sufficiently important to have this court provide in explicit terms precisely what a court, in contemplating the acceptance of a guilty plea, must do in order to fully comply with the requirements of Rule 11.

We are dealing with a serious matter; i.e., the waiver of a constitutional privilege. What a court in one jurisdiction deems to be adequate under the Rules to permit a defendant to waive his rights and to offer a guilty plea is often not adequate in another jurisdiction.

A requirement that the defendant actually participate in a colloquy would

serve to indicate on the record that the defendant personally is aware of the nature of the charges and, as the court stated, "everything that's occurring here today."

From the record, the court could not possibly have "determined" that the defendant understood the nature of the charges, the maximum possible penalty or the effect of a special parole term. The court did not even deem it necessary to define a "special parole term" or to show why it differs from an ordinary parole term or what real "effect" it would have on the defendant.

The only response from the defendant after the government summarized what was intended to be a summary of the "factual basis for the plea" was:

"It's close, Your Honor." That was enough for the court. In fact, that should have been a red flag, if nothing further, to require the court to inquire in depth. He was dealing with a man's very life and liberty. Rule 11 provides protection against mismanagement of the court's obligation to preserve the citizens rights to deprivation of life and liberty without due process.

Due process, in this case, would have obligated the court to invest a modest amount of additional time to have the defendant show, even by requesting an explanation by the defendant in the defendant's own words, that the defendant did actually understand the nature of the charges, the mandatory minimum penalty provided by law, the maximum possible penalty provided by law, including the

effect of any special parole term and that there was, indeed, a factual basis for the plea.

The court deemed itself satisfied only after the extremely shallow interview of the defendant and could not have possibly determined or concluded with a reasonable degree of satisfaction that the defendant's Rule 11 protections had been observed, that the plea was, indeed, voluntary, and that there was a factual basis for the plea.

A defendant's rights are not to be considered casually. The judge has an extremely serious obligation and he must make his determination based on actual facts that appear on the record that would lead another reasonable person to the same conclusion. To do less is to

deny a defendant the rights guaranteed by the Constitution and Rule 11.

The court of appeals' adoption of the district court's shallow inquiry as adequate was incorrect and squarely in conflict with decisions in other jurisdictions as well as in the Fourth Circuit. The Rule 11 hearing was not "exhaustive and totally sufficient."

In 1970, this very Court, in U.S. v. Tucker, 425 F. 2d 624, stated that the record must show that the court was successful in its attempts to ascertain from the defendant himself that he understood the nature of the charge and admitted engaging in conduct which constituted the charged offense. At p. 629, the court stated:

Statements and admissions by a defendant's counsel do not satisfy Rule 11's requirement that the court personally address the defendant to ascertain that defendant understands the nature of the charge. Nor do generalized admissions or statements by a defendant's counsel meet the requirement that the court be satisfied that there is a factual basis for the plea from the defendant's own admission that he engaged in conduct which constitutes the charged offense. Such generalized admissions or statements are totally inconsistent with the purposes of Rule 11, as set out in McCarthy, and we feel compelled to hold that there was not sufficient compliance with Rule 11 at the February 13, 1967, proceeding.

We submit that a reasonable direction by this Honorable Court would be to require the defendant to "recount his or her understanding of the charges in narrative form and in his or her own language" (U.S. v. Adams, Supra) and then we can be certain that the defendant's Rule 11 protections have been preserved. Then the record will make the circumstances obvious and the court, in deciding whether or not to accept a guilty plea, will not be obliged to rely on inferences or its own personal attitudes, prejudices or remembrances in attempting to "determine" that the defendant has been informed and understands.

II

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT HAS IMPROPERLY DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW AND CRIMINAL PROCEDURE WHICH SHOULD BE

SETTLED BY HIS COURT CONCERNING WHAT MAY BE CONSIDERED COMPLIANCE BY A DISTRICT COURT WITH THE REQUIREMENTS OF RULE 32 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

The court of appeals, in its opinion, indicated:

"The record is replete with counsel's references to contents of the presentence report and Byers' observations to his counsel about the contents. There must be some evidence in the record from which the court could reasonably infer that a discussion with the defendant took place. United States vs. Miller, 849 F.2d 896,897 (4th Cir. 1988)."

The court of appeals based its conclusion on the defendant's "counsel's numerous references to the presentence report during the hearing" and did not directly

ask the defendant whether or not he personally, "had the opportunity to read and discuss the presentence investigation report."

Once again, the defendant is the one who was on trial and, where the Rules require that a court make a determination that the defendant is aware of something or fully understands something or has read something, there the court should be obliged to do that which a reasonable and responsible jurist would do to make such a determination.

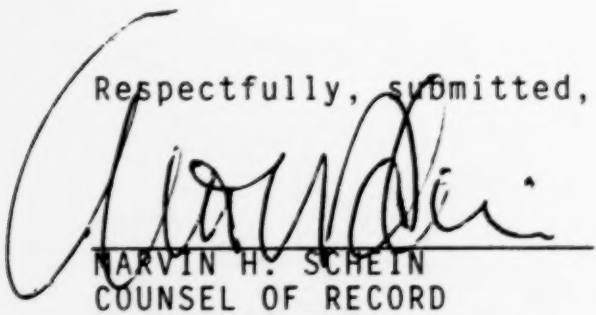
Further, if courts differ in their opinions as to what to do to make such determination, then the Rules should specifically set forth guidelines of procedure.

Conversation with the defendant, personally is necessary to enable the court to determine that the defendant, personally, had the opportunity to read and discuss the presentence investigation report.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the petition or writ of certiorari should be granted and the judgment of the district court be reversed.

Respectfully, submitted,



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February 3, 1990

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 88-6842

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KARL ROBERT BYERS, JR.

Defendant - Appellant

Appeal from the United States District Court for the District of South Carolina, at Charleston. Falcon B. Hawkins, District Judge. (C/A No. 887-1173) (Cr. No. 830-166))

Argued: October 4, 1989
Decided: December 14, 1989

Before SPROUSE, Circuit Judge, Butzner, Senior Circuit Judge, and MACKENZIE, Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

Marvin Herbert Schein for Appellant. Robert Hayden Bickerton, Assistant United States Attorney (E. Bart Daniel, United States Attorney, on brief) for Appellee.

PER CURIAM:

Karl Robert Byers, Jr., defendant, appeals the district court's denial of his request to vacate sentence under 28 U.S.C. 2255. Byers complains of the court's improper acceptance of his guilty plea and its failure to comply with the requirements of Rule 32 of the Federal Rules Criminal Procedure.Finding that the district court properly conducted a full Rule 11 inquiry before accepting the defendant's guilty plea and fully complied with Rule 32, we affirm.

I

On February 3, 1984, Byers entered guilty pleas to all nine counts of the indictment pending against him. Before accepting the pleas, the district judge conducted a detailed inquiry under Rule 11 of the Federal Rules of Criminal Procedure. That inquiry is fully reported in the record on appeal beginning on page 006 of the Supplemental Appendix. The inquiry was further augmented before sentencing as reported

in the Supplemental Appendix, pages 041 and 043. In the following synopsis of the trial proceedings, the page numbers of the Supplemental Appendix are cited in parentheses.

The Rule 11 questioning was conducted with the defendant under oath (006). It was developed that the defendant was guaranteed representation by counsel (008); defendant's age was established (011); he was a high school graduate (011); he had had no drugs or alcohol for 24 hours (011); he understood the proceedings (012); he had had ample discussions of his case with his attorneys (012); he knew he was entitled to a jury trial if he persisted in his plea of not guilty (013); he understood he would be presumed innocent (013); the government would have to prove his guilt

by competent evidence beyond all reasonable doubt (013); all witnesses against him would have to appear in court before him and testify in his presence (013); his attorney could object to evidence of the government (013); his attorneys could cross examine government witnesses (013); he could testify or not testify, with no inference or guilt if he did not testify (013); if the guilty pleas were accepted defendant would waive some rights enumerated above (014); on a guilty plea he would waive his Fifth Amendment right not to incriminate himself if the court chose to question him about the charged (sic) to which he pleaded guilty (014); he was entitled to formal arraignment (015); each separate count was individually explained by the judge (015-019); defendant stated that he understood each count (020); the

government must prove each charge by competent evidence beyond a reasonable doubt (020); the government would have to prove specific intent (020); the maximum penalty on each count was explained to defendant (021-023); the minimum sentence under Count 9 was 10 years (024); special parole term was defined (024); defendant stated he had not been threatened to enter a plea (024); defendant denied any promises about his sentence (025); defendant specifically admitted guilt as to each count individually (025); the evidence was summarized by the government (025-034); and, before sentencing, defendant denied any psychiatric history (040).

Byers was sentenced on April 17, 1984. The court discussed the presentence report with Byers and his counsel and asked if there were any inaccuracies.

The court heard the statements of Byers and his mother, argument of counsel, and then sentenced Byers. Forfeitures related to the enterprise were ordered. The court stated that Counts 1 through 8 merged into Count 9 (the continuing criminal enterprise count).

Three years later, Byers filed a motion to vacate sentence pursuant to 28 U.S.C. 2255, alleging violations of Rules 11 and 32 of the Federal Rules of Criminal Procedure, which Judge Hawkins denied.

II

On Byers' first claim, that the district court failed to comply with the requirements of Rule 11(c), we conclude that the district court satisfied all requirements of Rule 11(c) as per the

contents of that inquiry detailed herein. Byers' appellate contentions regarding the Rule 11 hearing are in conflict with the record on appeal.

As noted in United States v. Reckmeyer, 786 F. 2d 1216 (4th Cir. 1986), "[t]he purpose of the Rule 11 requirement 'is to assure that the accused be not misled as to the nature of the offense with which he stands charged. There is no simple or mechanical rule as to how the court is to determine defendant's understanding of the charge.'" Id. at 1221 (citing 1 C. Wright, Federal Practice and Procedure, Crim. 2d 173, at 587 at nn. 7-8 (1982)).

Based on this rationale, we find that Byers had a complete understanding of all of the charges, the range of possible sentences, and he was advised by the Court of every Rule 11 requirement. This Rule 11 hearing was exhaustive and

totally sufficient. The challenge thereto is DENIED.

III

Regarding the sentencing hearing, Byers contends that he was denied the opportunity to make a statement and also that the court failed to verify that he had an opportunity to review the presentence report and discuss it with counsel, all charged to be in violation of Rule 32 of the Federal Rules of Criminal Procedure. Again, his appellate contentions are in direct conflict with the record.

Rule 32 requires the court to "address the defendant personally and ask him if he wishes to make a statement in his own behalf . . . . " Fed. R. Crim. P. 32(a)(1)(C). Although Byers asserts that the court did not allow him to make a statement, the transcript from the

sentencing hearing contains the court's invitation to him for any statement and the statement he made in response to that invitation to him Supp. App. 045-050.

Rule 32 additionally states that the court shall "determine that the defendant and his counsel have had the opportunity to read and discuss the presentence investigation report . . . ." Fed. R. Crim. P. 32(a)(1)(A). Contrary to the assertions of Byers, he was provided an opportunity to read the report and discuss it with counsel. The record is replete with counsel's references to contents of the presentence report and Byers' observation to his counsel about the contents. There must appear some evidence in the record from which the court could reasonably infer that a discussion with the defendant took place. United States v. Miller, 849 F.2d

896, 897 (4th Cir. 1988). That is abundantly evident here.

Based on Byers' own statement to the court at the sentencing hearing and his counsel's numerous references to the presentence report during the hearing, we conclude that the district court properly complied with Rule 32. Therefore, the judgment of the district court is

AFFIRMED

APPENDIX "B"

Federal Rules of Criminal Procedure

Rule 11. Pleas

(a) Alternatives.

(1) In General. A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

* * *

(c) Advice to Defendant. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) the nature of the charge to

which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, including the effect of any special parole term or term of supervised release and, when applicable, that the court may also order the defendant to make restitution to any victim of the offense; and

(2) if the defendant is not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant; and

(3) that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury and at that trial the right to the assistance of counsel, the right to confront and

cross-examine adverse witnesses, and the right against compelled self-incrimination; and

(4) that if a plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to at trial; and

(5) if the court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant has pleaded, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

(d) Insuring That the Plea is Voluntary. The court shall not accept a plea of guilty or nolo contendere without

first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or the defendant's attorney.

* * *

(f) Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

* * *

APPENDIX "C"

Federal Rules of Criminal Procedure

Rule 32. Sentence and Judgment

(a) Sentence.

(1) Imposition of Sentence. Sentence shall be imposed without necessary delay, but the court may, upon a motion that is jointly filed by the defendant and by the attorney for the Government and that asserts a factor important to the sentencing determination is not capable of being resolved at that time, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. Prior to the sentencing hearing, the court shall provide the counsel for the defendant and the attorney for the Government with

notice of the probation officer's determination, pursuant to the provisions of subdivision (c)(2)(B), of the sentencing classifications and sentencing guideline range believed to be applicable to the case. At the sentencing hearing, the court shall afford the counsel for the defendant and the attorney for the Government an opportunity to comment upon the probation officer's determination and on other matters relating to the appropriate sentence. Before imposing sentence, the court shall also -

(A) determine that the defendant and his counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

(B) afford counsel for the defendant

an opportunity to speak on behalf of the defendant; and

(C) address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of the sentence.

The attorney for the Government shall have an equivalent opportunity to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the Government, the court may hear in camera such a statement by the defendant, counsel for the defendant or the attorney or the Government.

* * *